

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:11cv07

**ROBERT GUNKEL and wife,
KIMBERLY GUNKEL,**

Plaintiffs,

vs.

**ROBBINSVILLE CUSTOM MOLDING, INC.,
a/d/b/a ROBBINSVILLE CUSTOM
MOULDING and JOHN GARLAND,**

Defendants.

ORDER

THIS MATTER is before the Court on the Defendants' Motion for Summary Judgment. [Doc. 44].

In the Complaint filed in this matter on February 23, 2011, the Plaintiffs alleged jurisdiction was based on federal question jurisdiction pursuant to 28 U.S.C. §1331. [Doc. 1 at 1]. The claims alleged in the Complaint, however, are all state law claims. [Id. at 2-6].

In their Answers, the Defendants denied federal question jurisdiction and denied that the jurisdictional threshold amount of \$75,000 was satisfied for purposes of diversity jurisdiction. [Doc. 6; Doc. 7]. Each Defendant also raised jurisdiction as an affirmative defense. [Id.; Doc. 6].

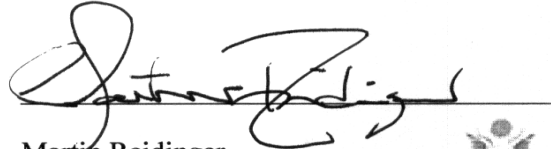
In the pending Motion for Summary Judgment, the Defendant raised the issue of jurisdiction, noting that no federal question jurisdiction has been shown. [Doc. 45 at 23]. In response, Plaintiffs' counsel conceded that the Complaint contains a "scrivener's error" which refers to jurisdiction pursuant to 28 U.S.C. §1331, the federal question statute, rather than §1332, the diversity statute. [Doc. 47 at 2]. Counsel offered to move to amend the Complaint, but did not do so. [Id.]. Counsel did not address the Defendants' claim that the jurisdictional threshold of \$75,000 has not been met.

Federal district courts have an independent obligation to address subject matter jurisdiction *sua sponte*. Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008). To that end and keeping in mind that the Court has scheduled a hearing on this matter, the Plaintiffs will be required to file response to this Order in which the jurisdictional threshold must be addressed. The Defendants will then be allowed to respond to the Plaintiffs' position.

IT IS, THEREFORE, ORDERED that on or before November 19, 2012 the Plaintiffs shall file response addressing the evidence to show that the jurisdictional threshold of \$75,000 has been satisfied.

IT IS FURTHER ORDERED that on or before November 26, 2012, the Defendants shall file response to the Plaintiffs' position.

Signed: November 12, 2012


Martin Reidinger
United States District Judge

